



Agenda Date: 8/29/01

Agenda Item: 3B

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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| IN THE MATTER OF THE ALLEGED) | <u>CABLE TELEVISION</u> |
| FAILURE OF COMCAST CABLEVISION) | ORDER ACCEPTING |
| OF SOUTH JERSEY, INC. TO COMPLY) | STIPULATION OF SETTLEMENT |
| WITH CERTAIN REQUIREMENTS) | |
|) | BPU DOCKET NO. CO01060366 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

This matter considers the proposed acceptance of a Stipulation of Settlement between Comcast Cablevision of South Jersey, Inc. ("Comcast"), the Division of the Ratepayer Advocate ("RPA") and Board Staff ("Staff") (collectively, "Parties") resolving an outstanding dispute involving Comcast's pledged upgrade of its cable plant in certain municipalities (the Boroughs of Swedesboro, Penns Grove and Woodstown, and the Townships of Logan, Oldmans and Franklin) (collectively, "Municipalities").

By way of background, on November 17, 1999, Comcast LCI Holdings, Inc. ("Comcast LCI") and Lenfest Communications, Inc. ("Lenfest") petitioned the Board for approval of a proposed merger of Lenfest with and into Comcast LCI (See In the Matter of the Application for Approval of the Merger of Lenfest Communications, Inc. and Comcast LCI Holdings, Inc., Docket No. CM99110855). During the course of the Board's review of that proposed transaction, Staff became aware of a potential violation of certain franchise commitments by Lenfest pertaining to an obligation to upgrade its cable plant in the Municipalities to a capacity of 550 megahertz ("MHz").

In response to Staff's inquiry into Lenfest's franchise commitments, and in an effort to allow the proposed merger transaction to proceed unimpeded, Comcast Cable Communications, Inc. ("CCC"), a wholly-owned subsidiary of Comcast Corporation and parent of Comcast, committed to have Comcast upgrade the cable plant in the Municipalities to a 750 MHz capacity rather than the 550 MHz committed to by Lenfest, within six months of the merger closing. If Comcast failed to meet the six-month upgrade deadline, it agreed to pay the State of New Jersey the sum of \$500,000.00 to resolve the alleged non-compliance by Lenfest. Further, Comcast gained the consent of the Municipalities to its proposal.

Also, as part of its overall proposal, CCC included a rate commitment whereby, Comcast would:

- a. Reduce its monthly rate for Limited Basic Cable Service ("B-1 rate") in Franklin Township from \$12.75 to \$9.50 and cap the B-1 MPR rate and tariff rate in the Municipalities at \$9.50 for a period of three (3) years and forego any increase to basic rates through annual FCC Form 1240 adjustments; and
- b. Forego any increase to its B-1 rates through filings (FCC Form 1235) to recoup the cost of the upgrade in the Municipalities. Absent this commitment, Comcast, under FCC rules, could otherwise, through FCC Form 1235, request an add-on to the B-1 rate to recoup the costs of this upgrade.

During the discussions of the rate commitment, the issue of two new rate districts was raised because the Franklin Township subscribers were paying a B-1 rate of \$12.75 while the B-1 rate in the remaining five (5) municipalities was \$9.50. Rather than having two new rate districts, one district for Franklin Township and another for the remaining five (5) municipalities, Comcast elected to voluntarily reduce the Franklin Township B-1 rate to \$9.50, equalizing the B-1 rates for the six (6) towns, and establish one new rate district.

By Order dated January 6, 2000, in Docket No. CM99110855, the Board approved the merger of the former Lenfest systems into Comcast, which addressed, inter alia, Lenfest's alleged failure to honor its upgrade construction commitments to the Municipalities, Comcast's proposal to resolve the non-compliance issue and Comcast's rate commitment. Closing on the merger occurred on January 18, 2000, and Comcast LCI, formerly Lenfest, was renamed Comcast Cablevision of South Jersey, Inc. The closing of the merger also set the construction deadline for Comcast at July 18, 2000.

Thereafter, by letter dated June 27, 2000, Comcast notified Staff that, as of May 31, 2000, it had completed the construction in the Municipalities. However, since Comcast's notice did not address the date that the additional programming (as a result of the upgrade) would be made available to customers, Staff instituted an inquiry into the matter. Staff was concerned that Comcast's failure to activate the additional channels to the benefit of its subscribers had breached its commitment to upgrade the Municipalities ahead of the company's general upgrade plans for the other former Lenfest cable systems.

Comcast responded to Staff by letter dated September 6, 2000, that while it had agreed to upgrade the system capacity in the Municipalities no later than July 18, 2000, and had done so by the end of May 2000, its commitment had been met. Comcast further contended that, as part of its commitment, it had not agreed to provide the additional services made possible by the upgrade within that six-month period, but had planned to provide same as soon as it was feasible to do so. Ultimately, the additional programming was activated by Comcast on or about November 15, 2000.

Notwithstanding Comcast's belief that its commitment did not include the activation of additional services within the six-month timeframe, the RPA and Staff were of the collective recollection that the commitment had, in fact, included a pledge to activate the additional programming coincident with the completion of the upgrade. Similarly, there was also a difference of opinion between the Parties concerning the timing of the B-1 rate reduction to Franklin Township subscribers. Comcast contends that the Franklin Township rate reduction was to be implemented in conjunction with other former Lenfest cable system rate settlements, as

referenced in the Board's January 6, 2000 Order (See Order at page 4), which were to be implemented on or about June 22, 2001. RPA and Staff were of the collective belief that the rate reduction was to commence on February 1, 2000, consistent with Comcast's rate cycle for the former Lenfest rate districts. In support of their belief, RPA and Staff point to the fact that the rate commitment involving the Municipalities was not included in the Lenfest Global Rate settlement, and was specifically, by reference, excluded in Comcast's rate quantification calculations.

In addition, pursuant to the Board's Order of May 9, 2001 approving a Global Settlement, Docket Nos. CR94060238 *et al.*, regarding Lenfest's prior rates filings, Comcast was required to submit an "informational" FCC Form 1240 within thirty (30) days of the Board's Order for each of the twelve (12) affected systems which included the Municipalities. The twelve systems are: East 1, East 2, Atlantic City, Downbeach, West, Vineland, Salem, Turnersville, Franklinville/Non Rebuild, Franklinville/Rebuild, Lambertville and Hopewell. These filings were received on June 8, 2001.

These "informational" filings can result in the lowering of the stipulated MPR and current tariff rate in any of the twelve (12) systems if the "informational" FCC Form 1240 calculates a MPR, which is less than the stipulated MPR or current tariff rate. The "informational" filing for the Franklinville/Non Rebuild system, which affected the Municipalities, reflected a MPR of \$9.38, which decreased the current tariff rate of \$9.50 by \$.12.

In order to amicably resolve the various differences in this matter, the Parties engaged in settlement discussions, which resulted in the Stipulation of Settlement that is now before the Board for consideration.

The pertinent parts of the Stipulation, which was executed on August 16, 2001, are summarized as follows:

1. Comcast will pay a refund in the amount of approximately \$168,636.00 (plus interest through actual date of distribution) in the form of a monthly bill credit totaling \$39.00 per subscriber plus interest to all Franklin Township subscribers from December 1, 1999 through the period of distribution (approximately \$1.23 per month over forty months). The distribution period will commence within 60 days of the issuance of a Final Decision and Order accepting this Stipulation and continue through January 31, 2005. Said credits shall be identified as "BPU Refund" and will be reflected as a separately itemized monthly bill credit.
2. A new rate district will be established for the Municipalities whose rates for the limited basic tier of service (B-1 rate) shall be capped through January 31, 2005 at \$9.38, unless informational filings to be filed annually throughout the cap period indicate that a lower rate should be charged. In that case, the lower rate will become the new rate ceiling throughout the remaining cap period.
3. Comcast lowered the B-1 tariff rate in the Municipalities to \$9.38 on or about August 6, 2001.
4. Comcast shall forego any increase to the B-1 rate in the Municipalities through filings to recover the cost of the upgrades (FCC Form 1235).

5. Comcast shall forego any increase in the limited basic tier of service rates in the Municipalities through annual FCC Form 1240 adjustments throughout the term of the rate cap period.
6. Within thirty (30) days of the issuance of a Final Decision and Order accepting the Stipulation, Comcast shall submit a tariff reflecting the new rate district for the Municipalities and the limited basic B-1 rate of \$9.38
7. Comcast shall submit an "informational" Form 1240 for the new rate district governing the Municipalities each year during the term of the rate cap on or about November 1, 2001, November 1, 2002 and November 1, 2003.
8. The rate cap shall expire on January 31, 2005. On or about November 1, 2004, Comcast will submit FCC Form 1240 for the new district. The beginning rate (Line A1) for the new rate district filing will be the stipulated MPR (see attached Exhibit 2, Line I9) or the adjusted MPR pursuant to a subsequent "informational" Form 1240, Line I9 described in Paragraphs 8 or 9, whichever is lower. Comcast will not be permitted to true-up or recover an adjustment (no Module F, G or H calculations) for the entire cap period, in either the November 1, 2004 filing or a subsequent filing that covers the cap period. Comcast will, also, not be permitted to true-up the difference between the stipulated or adjusted beginning rate established pursuant to a subsequent "informational" filing and the rate actually charged to the subscribers (tariff rate) during the rate cap period should Comcast voluntarily choose an Operator Selected Rate that is lower than the stipulated or adjusted MPR.
9. The Stipulation of Settlement resolves any and all issues raised or which could have been raised by any party, whether known or not, relating or pertaining in any way to or in connection with the within matters.

The Board has carefully reviewed the Stipulation of Settlement and FINDS it to be reasonable, in the public interest and in accordance with the law. Therefore, the Board HEREBY ACCEPTS the Stipulation of Settlement (attached hereto) as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

The Board DIRECTS Comcast to issue the refund due its subscribers in Franklin Township pursuant to the Stipulation of Settlement within sixty (60) days of the date of this Order, and to inform the subscribers of the reason for the refund. The refund shall be denominated "BPU Refund" on subscribers' bills. Comcast, within ten (10) days of the final payment of the refund to subscribers, is HEREBY ORDERED to notify the Board and its Office of Cable Television in writing of the date(s) the refund was paid, the total amount refunded and to certify that the refund has been completed.

The Board FURTHER ORDERS that should this cable system encompassing the Municipalities, or any part thereof, merge and/or migrate to another system, be upgraded and/or rebuilt, its ownership or control be otherwise sold or transferred to another entity, including parents and affiliates, the basic service tier rate that will be eliminated or superseded as a result of the merger, migration, upgrade, rebuild, sale or transfer must be "trued-up" (47 C.F.R. § 76.922(e)(3)). The final true-up for this system, or part thereof, should be calculated on FCC

Form 1240 and begin where the last true-up period ended on its prior FCC Form 1240, subject only to true-up restrictions set pursuant to a rate cap Order. This true-up calculation shall be filed with the Board when all the affected subscribers are being charged the rate resulting from the merger, migration, upgrade, rebuild, sale or transfer and may be filed in conjunction with the annual rate adjustment cycle (Form 1240) established as a result of said merger, migration, upgrade, rebuild, sale or transfer.

The cable system encompassing the Municipalities, or any part thereof, may be subsequently deregulated as a result of a finding by the Board, the FCC or other party of competent jurisdiction, that this system, or any portion thereof, is subject to effective competition. Should that be the case, the last basic service rate established as a result of a prior FCC Form 1240 or such subsequent rate calculation method as may be heretofore adopted by the Board, the FCC or other party of competent jurisdiction, prior to the deregulation of any rate that is now or may in the future be subject to the Board's jurisdiction, must be trued-up for the period of time that the affected rates were subject to regulation by the Board, subject only to true-up period restrictions set pursuant to a rate cap Order.

DATED: August 30, 2001

BOARD OF PUBLIC UTILITIES
BY:

(signed)

CONNIE O. HUGHES
ACTING PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)

FRANCES L. SMITH
BOARD SECRETARY

**IN THE MATTER OF THE ALLEGED FAILURE OF COMCAST CABLEVISION
OF SOUTH JERSEY, INC. TO COMPLY WITH CERTAIN REQUIREMENTS**

Docket No. CO01060366

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